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**Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554**

In the Matter of) FCC 94-99
)
Implementation of Section 309 (j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

To: The Commission

PETITION FOR RECONSIDERATION

The Rural Cellular Association ("RCA")¹, by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, respectfully requests reconsideration of the Commission's "Fourth Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 59 Fed. Reg. 24,947 (1994) ("Fourth R&O") which establishes rules and procedures for auctioning licenses in the Interactive Video and Data Service ("IVDS").

The IVDS competitive bidding rules adopted by the Commission are inconsistent with the Communications Act of 1934, as amended ("the Act"), and disserve the public interest. By virtue of its

¹ The RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country covering approximately 6.5 million in population. RCA member companies are affiliated with Local Exchange Carriers (LECs) who operate 50,000 or fewer access lines. RCA member companies are adversely affected by the rules that have been adopted in the above-captioned proceeding.

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complete failure to permit rural telephone companies² to receive any bidding preference, the Commission has adopted rules which not only fail to comply with the Congressional directive set forth in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), but virtually ensure that IVDS will not be available to those living in rural America. The award of bidding preferences to rural telephone companies would not only be consistent with Section 309 of the Act, it would serve the public interest by increasing the prospect that IVDS will be licensed to an entity that will provide the service to rural areas.

The Budget Act directs the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays." (emphasis added). In order to carry out this mandate and ensure the provision of IVDS to rural America, the Commission must ensure that

² In Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, 59 Fed. Reg. 22,980 (1994) ("Second R&O") the Commission adopted Rule Section 1.2110(b)(3) which provides, in pertinent part, that: "a rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants." 47 C.F. R. 1.2110(b)(3) (emphasis added). This definition of "rural telephone company" inexplicably excluded many small independent telephone companies that serve rural areas. On June 3, 1994, the RCA filed a petition for reconsideration seeking modification of the definition of "rural telephone company" to include independently owned and operated local exchange carriers that either operate 50,000 or fewer access lines or serve communities of 10,000 or fewer in population.

bidding preferences are given to rural telephone companies. RCA urges the Commission to modify its rules to include rural telephone companies in the group eligible for bidding preferences.

I. BACKGROUND

Historically, rural telephone companies have been the only providers of telecommunications services in rural areas. Larger companies chose not to provide telephone service to these less economically desirable areas. The commitment these telephone companies have made to provide their subscribers with new telecommunications services is readily demonstrated by their quick roll-out of cellular services in the rural markets and the recent construction of radio-based wireless cable systems to provide video services to rural America.

The FCC and Congress have also recognized the commitment of rural telephone companies to serve the needs of rural subscribers and have afforded rural telephone companies appropriate treatment in recognition of this commitment. In 1984, Congress created a "rural exemption" to its telephone cable cross-ownership prohibition in order to ensure that cable service was made available to rural America.³ More recently, Congress specifically mandated that the Commission award licenses for new technologies in a manner that promotes the following objectives:

³ 47 U. S. C. § 533 (b) (3) (1993).

1) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; and

2) the promotion of accessibility of new technology to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

See Budget Act, Section 309(j)(3).

With respect to IVDS, the Commission recognized the importance of licensing IVDS service to rural areas by specifically deciding to award licenses based on the cellular service geographic areas defined by the Metropolitan Statistical Areas ("MSA") and Rural Service Areas ("RSA").⁴ In Amendment of the Commission's Rules for Rural Cellular Service,⁵ the FCC defined a rural service area for cellular purposes as "markets not categorized as Metropolitan Statistical Areas (MSAs) or New England County Metropolitan Areas (NECMAs)."⁶ The FCC then adopted a plan that recognized the existence of rural service areas throughout the country. As discussed below, the Commission's Fourth R&O failed to adopt procedures that would give rural telephone companies a meaningful opportunity to participate in the auction process and thereby improve the likelihood that IVDS will be available in rural America.

⁴ See 47 C.F. R. 95.803(c).

⁵ 60 RR 2d 1029 (1986).

⁶ Id. at 1031, fn. 1

II. DISCUSSION

In the Fourth R&O, the Commission states: "we adopt specific preferences for the IVDS designed to ensure that designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of the service." (para. 36). The FCC then proceeded to adopt preferences only for minorities, women and small businesses. These preferences include:

(1) A 25 percent bidding credit will be available for one license in each service area (for either frequency segment A or B), for businesses owned by minorities and/or women;

(2) Tax certificates will be available to initial investors in minority and women-owned enterprises upon divestiture of their non-controlling interests, and to licensees who transfer their authorizations to minority or women-owned businesses; and

(3) Installment payments will be made available to small businesses.

Fourth R&O para. 36. No preferences were awarded to rural telephone companies.

The Commission expressly decided not to provide bidding credits or other separate preferences to rural telephone companies bidding on IVDS spectrum concluding that:

given the relatively modest build-out costs for systems in this service, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of IVDS offerings to rural areas. The preferences are also, therefore, unnecessary in this context to meet Congress' intent to ensure that rural consumers receive the benefit of new technologies such as IVDS. (para. 40, footnote 66).

There is utterly no logic to this statement. Build-out costs have absolutely nothing to do with whether an entity is successful in

obtaining an IVDS license. Congress has recognized that in a spectrum auction environment, the public interest requires that some consideration and preferential treatment be afforded to rural telephone companies in their participation in all auctions for spectrum including IVDS licenses. History has repeatedly proven that if a rural telephone company is not awarded a radio license, the radio service will not be provided to rural areas. The Commission's IVDS build-out benchmark requirements which require IVDS licensees to provide coverage to 10 percent of the population or geographic area within one year, 30 percent of the population or geographic coverage area within three years and 50 percent of the population or geographic area within five years,⁷ can be readily met by providing coverage to the most densely populated areas within the service area. Once the build-out requirements are met there is no incentive for the IVDS licensee to provide coverage to sparsely populated rural areas. Unlike the cellular rules, the IVDS rules do not provide that unserved areas revert back to the FCC for licensing to other interested entities. Under the IVDS rules, rural areas of the country could remain unbuilt and forever held captive by a disinterested licensee. Therefore, it becomes increasingly evident that unless rural telephone companies are provided with consideration and preferences in their attempt to acquire the RSA licenses at auction, the service will not be available to rural America.

The Commission's faulty reasoning for excluding rural

⁷ See 47 C.F.R. 95.833.

telephone companies is also incongruous with the rationale set forth in the Fourth R&O in support of the award of preferences to minorities and women. In paragraph 41 of the Fourth R&O, the Commission states:

Apart from Congress' directive, we think that ensuring opportunities for women and minorities to participate in the IVDS is important for the telecommunications industry. These companies can play a vital role in serving inner city areas and other niche markets that may be overlooked by other companies, thus promoting our goal of universal access to telecommunications services. Not only will the industry become more diverse through the adoption of meaningful preferences, but we believe that a much wider customer base will obtain access to innovative technologies. Moreover, studies show that even when minority-owned firms do not locate within urban minority communities, they employ more minorities relative to other companies, thereby promoting our goals of equal employment opportunity and economic growth.

Fourth R&O para. 41.

Therein, lies the very support for providing auction preferences for rural telephone companies! Ensuring opportunities for rural telephone companies to participate in IVDS is important for the telecommunications industry because rural telephone companies play a vital role in serving rural areas that are overlooked by other companies, thus promoting the goal of universal access to telecommunications services. Moreover, a much wider customer base will obtain access to innovative technologies. Additionally, by implementing new radio-based services in rural areas, rural telephone companies hire more employees thereby promoting economic growth in rural areas. In many rural areas, the rural telephone company is the largest employer.

With respect to the installment payment preference awarded to

small businesses, the RCA notes that installment payments are only available to rural telephone companies provided they meet the definition of a "small business."⁸ The Fourth R&O, however fails to indicate that the Commission gave any consideration to the fact that many rural telephone companies do not meet the Commission's current small business definition because of the significant capital required to operate a small telecommunications company.⁹ This distinction was not overlooked by Congress when it recognized that rural telephone companies should be given distinct consideration in addition to whatever preferences they may receive if they qualify as a small business.

The RCA submits that the Commission's positive experience with the rapid and efficient provision of rural cellular radio service by rural telephone companies attests to the validity of awarding special consideration in the instant proceeding. Entities which qualify as "rural telephone companies" should not be frustrated in their attempt to continue their commitment to bring new technologies to rural America because of erroneous fact finding on the part of the Commission.

The FCC's failure to provide preferences to rural telephone companies not only fails to carry out the statutory mandate, it also fails to take into consideration past policy and rules

⁸ Fourth R&O para. 53.

⁹ The RCA notes that several parties have file petitions for reconsideration of the Second R&O requesting reconsideration of the small business definition. See petition for reconsideration filed by U.S. Intelco Networks, Inc. and National Telephone Cooperative Association.

concerning the treatment of rural telephone companies and their fulfillment of the provision of other radio-based service to rural areas. Accordingly, the Commission should modify its rules to ensure that all rural telephone companies are given the opportunity to participate in the provision of IVDS to rural areas.

III. PROPOSAL

In order for the Commission to satisfy its statutory as well as public interest obligations, it must modify its rules to provide for meaningful preferences to rural telephone companies. As discussed above, because the rationale for the award of bidding credits and tax certificates to minorities and women is also applicable to rural telephone companies, rural telephone companies should be given bidding credits and tax certificates. Additionally, since Congress recognized that rural telephone companies should be given distinct consideration in addition to whatever preferences they may receive if they qualify as a small business, rural telephone companies should be provided the opportunity to pay for the license using installment payments regardless of whether the telephone company meets the definition of a "small business."


IV. CONCLUSION

Congress has explicitly defined the public interest as requiring special regard to and accommodation of the needs of rural America. It has recognized the desirability of fostering participation by rural telephone companies in the provision of new radio-based services, including IVDS. The RCA, therefore, respectfully submits that adherence to the Congressional mandate through the modification of the auction rules as proposed herein will serve the public interest.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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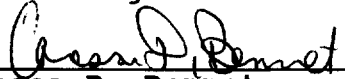
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June 13, 1994

CERTIFICATE OF SERVICE

I, Caressa D. Bennet, regulatory counsel to Rural Cellular Association, hereby certify that copies of the foregoing Petition for Reconsideration were served on the 13th day of June, by first class, U.S. mail, postage prepaid, to the following:


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